IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1947 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIDYARAM STEEL REROLLING MILL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1947 of 2001

MR BM MANGUKIYA for Petitioner No. 1

MR SIRAJ GORI, AGP for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 12/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Mr Siraj Gori, learned AGP waives service of Rule for the respondents.

In the facts and circumstances of the case, the

petition is taken up for final disposal today.

2. In this petition under Article 226 of the Constitution, the petitioner has challenged the decision dated 2.2.2001 of the State Government (Annexure "U") in so far as it directs the petitioner to make payment of sales-tax with interest at the rate of 12% p.a. and the interest to be paid till 12.11.1998.

3. TeePee Steel Pvt.Ltd. had obtained loan from GSFC. Since the said Company failed to repay the loan, the GSFC exercised its powers under Section 29 of the State Financial Corporations Act, 1950 and took possession of the said Company and issued an advertisement inviting tenders for sale of assets of the said Company. The petitioner was found to be the highest bidder, but since the said Company was in liquidation, fresh bids were submitted before this Court and the sale was confirmed in favour of the present petitioner. After purchasing assets of the said Company, the petitioner approached the State Government for availing of the benefits under the Scheme for Rehabilitation of Small Scale and Non-BIFR Sick Industries framed by the State Government vide Government Resolution dated 20.6.1991. The petitioner submitted the application dated 15.7.1993 to the Industries Commissioner for availing such benefits. On 2.11.1993, the Industries Commissioner addressed a letter to the Regional Manager, Gujarat State Financial Corporation requesting him to send his report within 15 days as the case of the petitioner was to be placed before the next meeting which was expected to be held in the month of November, 1993. On 24.12.1993 the Industries Commissioner addressed a letter to the General Manager (Comm.), Gujarat Electricity Board, Baroda reiterating the recommendations made by the Committee and requested him to see that the power supply is given to the petitioner on the due date i.e. before 31.12.1993. In November, 1994, the petitioner was given electric supply and was asked to make a fresh deposit of Rs.3,49,000/before the supply was given, but the case of the petitioner was considered to be a new connection and all the formalities for getting new connection were completed. On 1.5.1995 the Industries Commissioner addressed a letter to the Deputy Secretary in the Industries & Mines Department stating that as per the decision of the Committee the said Company is entitled for deferment in making payment of sales-tax and electricity duty. Despite the recommendations of the Industries Commissioner, the Commissioner of Sales-tax attached the bank accounts of the petitioner and, therefore, the petitioner approached the Industries

Commissioner. The Industries Commissioner requested the Commissioner of Sales-tax not to take any coercive steps.

On 23.7.1999, the State Government changed the policy replacing the erstwhile policy contained in the Resolution dated 20.6.1991 and constituted GBIFR vide Resolution dated 14.8.1998. The State Government took the view that in view of the above development, the petitioner's case cannot be considered under the old policy. The petitioner, therefore, filed Special Civil Application No.6731 of 1999 contending that the petitioner is entitled for deferment of payment of sales-tax for two years i.e. from 13.11.1994 to 12.11.1996 and from 14.4.1996 the petitioner has paid all the taxes and duties levied. In the said petition, this Court by order dated 15.9.1999 directed the respondents to accept the arrears of sales-tax and electricity duty without prejudice to the rights and contentions of the parties. During pendency of the said petition a decision was taken on the petitioner's application by the respondent and the petitioner was directed to pay the deferred sales-tax with 12% interest vide order dated 2.2.2001, which is under challenge in this petition. Hence, on 13.7.2001, Special Civil Application No.6731 of 1999 was permitted to be withdrawn without prejudice to the petitioner's rights and contentions in this petition.

4. At the hearing today, Mr BM Mangukiya, learned counsel for the petitioner states that the petitioner has already paid the amounts of Rs.22,97,687/- as the arrears of deferred sales-tax under the Gujarat Sales-tax Act and Rs.95,369/as arrears of deferred sales-tax under the Central Sales-tax Act for the relevant period between 13.11.1994 to 12.11.1996. Mr Mangukiya seeks leave to place on record a photostat copy of the letter dated 11.4.2004 of the Sales-tax Officer, Botad certifying that the petitioner has paid the aforesaid amounts.

Leave as prayed for is granted.

Mr Mangukiya submits that in view of the aforesaid payments, nothing further is required to be paid by the petitioner when the petitioner's application under the 1991 scheme is treated as having been granted.

5. On the other hand, Mr Siraj Gori, learned AGP for the respondents relies on the reply affidavit and submits that since the petitioner's application was not granted when the 1991 scheme was in operation and subsequently another scheme was introduced vide Government Resolution dated 14.8.1998, the petitioner's case was required to be

examined under the new scheme.

6. In view of the statements made in the reply affidavit which go to show that the petitioner had commenced production on 13.11.1994 and that the petitioner's application was even considered and recommended at the meeting held on 22.12.1993 by the Gujarat Industrial & Financial Reconstruction Board (GBIFR) and that the said Body had also taken the decision to grant the benefit of deferment in payment of electricity duty for the period of two years and a categorical decision regarding benefit of sales-tax deferment was to be taken after restarting of production and after the petitioner started production, on 1.5.1997 the Dy. Commissioner of Industries had made the recommendation to grant benefit of deferment for two years in sales-tax and electricity duty payment, it cannot be said that the petitioner's case was not required to be considered under the 1991 scheme merely because the final decision was not taken before introduction of the new scheme vide Government Resolution dated 14.8.1998.

7. In view of the above discussion, the petition is partly allowed. The impugned decision dated 2.2.2001 at Annexure "U" is quashed and the respondents are restrained from making any recovery of sales-tax/electricity duty or interest payable thereon for the period between 13.11.1994 to 12.11.1996 except in accordance with the 1991 scheme i.e. the scheme contained in the Government Resolution dated 20.6.1991.

8. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct Service is permitted.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-